SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 919-967-1450

601 WEST ROSEMARY STREET, SUITE 220 CHAPEL HILL, NC 27516-2356 Facsimile 919-929-9421

September 5, 2012

Chairman Stephen T. Smith
Environmental Management Commission
c/o Mr. Frank Crawley
Special Deputy Attorney General
NC Department of Justice
PO Box 629
Raleigh, NC 27602

Re: Pamlico-Tar River Foundation, North Carolina Coastal Federation, Environmental

Defense Fund, and Sierra Club v. North Carolina Department of Environment and

Natural Resources – Division of Water Quality and PCS Phosphate, Inc.

Case No. 09 EHR 1839

Dear Chairman Smith:

Enclosed please find an original and one copy of Response to Intervenor's Verified Request and Petitioners' Verified Request for Disclosure, Investigation, And Determination of Commissioner Conflicts and Disqualification If And As Appropriate. Please file the Response and return a filed stamped copy to me in the enclosed, self-addressed, stamped envelope.

Please do not hesitate to contact me if you have any questions or need additional information.

Sincerely yours

Derb S. Carter, Jr.

DSC/rgd Enclosures

Cc: Lois Thomas (via email and US mail)

John A. Payne (via email and US mail) George W. House (via email and US mail) Alexander Elkan (via email and US mail)

STATE OF NORTH CAROLINA	IN THE ENVIRONMENTAL
	MANAGEMENT COMMISSION
COUNTY OF WAKE	09 EHR 1839
PAMLICO-TAR RIVER FOUNDATION, ENVIRONMENTAL DEFENSE FUND, NORTH CAROLINA COASTAL FEDERATION, and SIERRA CLUB,))))
Petitioners,) RESPONSE TO INTERVENOR'S VERIFIED REQUEST AND PETITIONERS' VERIFIED REQUEST
N.C. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF WATER QUALITY,	FOR DISCLOSURE, INVESTIGATION, AND DETERMINATION OF COMMISSIONER CONFLICTS AND
Respondent,	DISQUALIFICATION IF AND AS APPROPRIATE
and)
PCS PHOSPHATE, INC.,))
Respondent-Intervenor.	<i>)</i>)

On August 24, 2012, Intervenor PCS Phosphate, Inc. filed a verified request for disclosure, investigation, and determination of conflicts targeting two commissioners in this contested case. The Environmental Management Commission ("EMC" or "Commission") has an ability and a history of policing its own ethics and conflicts, and this filing is unfortunate. In our clients' interests, this request for disclosure requires response.

This contested case turns on formal and informal Division of Water Quality ("DWQ") interpretations of the EMC's 401 water quality certification rules and Tar-Pamlico Riparian Buffer rules. Because this contested case involves formal interpretations of these rules and broad interpretations of general applicability, the decision by the EMC will not only decide this

contested case, but will control how the DWQ applies those rules to each project that requires a permit to impact streams, wetlands, or riparian buffers.

Several commissioners, as described below, represent and are associated with businesses that have "an economic interest in, or a reasonably foreseeable benefit from" the interpretations of the rules and agency guidance interpreting rules to be decided in this contested case. The EMC's determinations on the validity of these interpretations will dictate how water quality certification, wetlands, and riparian buffer rules will be applied to other applicants and projects, potentially or actually including clients and associates of these commissioners. Therefore, Petitioners request that these commissioners disclose potential conflicts, that the EMC investigate those potential or actual conflicts, and then make a decision regarding disqualifications as appropriate.

Petitioners Pamlico-Tar River Foundation ("PTRF"), Environmental Defense Fund,
North Carolina Coastal Federation, and Sierra Club (collectively "Petitioners"), pursuant to N.C.
Gen. Stat. §§ 150B-36 (2011) and 138A-1 et seq., Environmental Management Commission
Internal Operating Procedures Article XIV ("Internal Operating Procedures"), and Executive
Order No. 1,¹ hereby requests that the Honorable Commissioners Kevin Martin, Steve Tedder,
William Hall, Benne Hutson, and Christopher Ayers fully disclose information and material
relating to their interests and relationships, and any actual or potential conflicts in this matter and
seek guidance regarding the those conflicts. Petitioners further request that the Commission
investigate and make a determination as to whether any conflicts exist and whether any

¹ In its Verified Request for Disclosure, Investigation and Determination of Commissioner Conflicts, PCS Phosphate also cites the North Carolina Code of Judicial Conduct. The Code of Judicial Conduct is promulgated under the authority in Article 30 of Chapter 7A of the General Statutes of North Carolina. See North Carolina Code of Judicial Conduct at 1. The authorizing statutes define "judge" as "any justice or judge of the General Court of Justice of North Carolina." N.C. Gen. Stat. § 7A-374.2. Although the EMC sits in a quasi-judicial role, commissioners are not considered judges under North Carolina statutes or the Code of Judicial Conduct.

Commissioners should be disqualified in the Commission's review of the Administrative Law Judge's decision in this contested case. Further, Petitioners, in this request, provide correct information in response to PCS Phosphate's Verified Request for Disclosure, Investigation, and Determination of Commissioner Conflicts and Disqualification filed on August 24, 2012 regarding Commissioners Ernie Larkin and Amy Pickle. In support of this Request, Petitioners show the following:

<u>APA</u>

- 1. The EMC's review of Administrative Law Judge Cella's Recommended Decision is governed by the Administrative Procedure Act ("APA"). See N.C. Gen. Stat. § 150B-36 (2011).
- 2. The APA section applicable to this Request states if any party files an affidavit raising "personal bias or other reasons for disqualification of a member of the agency making the final decision, the agency shall determine the matter as part of the record" N.C. Gen. Stat. § 150B-36(a) (2011).
- 3. This Request satisfies the requirements of N.C. Gen. Stat. § 150B-36(a) (2011). Internal Operating Procedures of the Environmental Management Commission
- 4. The Internal Operating Procedures provide guidance to the EMC in circumstances where an actual or perceived conflict of interest exists.
- 5. It states that "[m]embers of the Commission must police themselves against actual and potential conflicts in the discharge of their statutory duties." Art. XIV, Sec. 2.
- 6. "Unless a member of the Commission with a potential conflict of interest places it in the public record, the member must withdraw from participation in the matter." Art. XIV, Sec. 3. "A member with a potential conflict of interest who decides to participate in the pending

matter must disclose, in the Commission meeting when the matter is called as an agenda item, the nature of the potential conflict of interest and the reason it does not cause them to withdraw from further participation in the matter." Id.

State Government Ethics Act

- 7. As recognized by its Internal Operating Procedures, the EMC is subject to the State Government Ethics Act, N.C. Gen. Stat. § 138A-1 et seq.
- 8. The State Government Ethics Act prohibits Commissioners from participating "in an official action or legislative action that will result in financial benefit, direct or indirect, to . . . [a] business with which the covered person or legislative employee is associated." N.C. Gen. Stat. § 138A-31(a).
- 9. "A public servant shall make a due and diligent effort before taking any action, including voting or participating in discussions with other public servants on a board on which the public servant also serves, to determine whether the public servant has a conflict of interest." N.C. Gen. Stat. § 138A-35(a).
- action requiring the exercise of discretion, shall knowingly participate in an official action by the employing entity if the public servant . . . [or] a business with which the public servant is associated . . . has an economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the public servant's participation in the official action." N.C. Gen. Stat. § 138A-36(a).

Executive Order One

- 11. Like the EMC's Internal Operating Procedures and the State Government Ethics Act, Executive Order Number One includes conflict of interest provisions relevant to the EMC.
- 12. "A Public Official shall make every effort to avoid even the appearance of a conflict of interest. An appearance of conflict exists when a reasonable person would conclude from the circumstances that the Public Official's ability to protect the public interest, or perform public duties, is compromised by familial, personal, or financial interests." Ex. Order No. 1, Sec. 7(b)(1).
- 13. As discussed below, based on the State Government Ethics Act, the EMC's Internal Operating Procedures, and Executive Order One, Commissioners Kevin Martin, Steve Tedder, William Hall, Benne Hutson, and Christopher Ayers have potential or actual conflicts of interest in this case due to their representation of clients with financial interests in the application of the water quality certification rules.
- 14. In addition, as discussed below, several of these commissioners openly advertise their position as a member of the EMC as part of their qualifications in soliciting clients and describing the services they can provide. Commissioners Tedder, Hall, Hutson, and Ayers have potential or actual conflicts of interest in this case due to their financial interest in and use of their membership on the EMC as a vehicle to solicit prospective clients, including clients that have financial interests in the rule interpretations in this contested case.

Commissioner Dr. Ernest W. Larkin

15. In its August 24, 2012 Request, PCS requested the disclosure of a potential conflict in this contested case due to Dr. Larkin's relationship with PTRF.

- 16. As fully described in the attached affidavit, Dr. Larkin is a member of PTRF but does not serve in any leadership or advisory position for the organization. See David Emmerling Aff., Ex. A.
- 17. Dr. Larkin served as a member of the Board of Directors of PTRF from 1982 to 1998. The permitting process at issue in this contested case had not begun in 1998 and Dr. Larkin, therefore, did not take any action as a member of the Board related to this contested case.
- 18. Dr. Larkin was named to PTRF's Science Advisory Board ("SAB") when it was created in 2007, but withdrew from the SAB shortly thereafter and did not attend or receive notice of SAB meetings. Dr. Larkin's name is listed as part of the SAB in PTRF's 2009 Annual Report due to oversight.
- 19. The SAB received updates on PCS's permitting process twice. Dr. Larkin did not receive notice of those meetings and did not attend either meeting.
- 20. The SAB did not make any recommendations to the Board of Directors regarding PCS's permitting process or the 401 Certification that is the subject of this contested case.
- 21. Based on PTRF's records, Dr. Larkin did not perform any leadership or advisory role in PTRF that relates to this contested case.

Commissioner Amy E. Pickle

- 22. Commissioner Amy Pickle was an attorney with the Southern Environmental Law Center ("SELC") from 2003 to 2008.
- 23. Based on contemporaneously kept time logs, Ms. Pickle did not participate in SELC's representation of Petitioners in this matter. <u>See</u> Ex. B.

Commissioner Kevin C. Martin

- 24. According to the EMC's Commissioner biographies, attached as Exhibit C, Commissioner Martin is a co-founder and principal of Soil and Environmental Consultants ("S&EC").
- 25. S&EC is an environmental consulting firm that represents "a wide range of developers." S&EC, www.sandec.com (last visited Aug. 30, 2012).
- 26. The services provided by S&EC include "professional services in the specific areas of wetland and water quality permitting and riparian buffer requirements on a wide range of projects including municipal projects, state projects, and private residential and commercial developments." Environmental Compliance, S&EC, http://sandec.com/services/permitting/ (last visited Aug. 30, 2012). The company's website states that "[o]ur professionals are experts in the preparation of environmental permit applications, and the necessary regulatory agency coordination and documentation" including 404 Permits and 401 certifications. <u>Id.</u>
- 27. S&EC represented several clients in projects that appear to be regulated by the water quality certification rules at issue in this case. Those projects include:
 - o Franklin County Hub Road Extension: S&EC "performed a jurisdictional delineation of regulated wetlands and streams, and evaluated the proposed crossing in regard to USACE and NCDENR Division of Water Quality and permitting requirements." http://sandec.com/portfolio/engineering-design/franklin-county-hub-road-extension-flood-study/ (last visited Aug. 30, 2012).
 - o Beaver Creek/Evans Road Extension: S&EC "performed a jurisdictional delineation of regulated wetlands and streams, and evaluated the proposed crossing in regard to USACE and NCDENR Division of Water Quality and permitting requirements." http://sandec.com/portfolio/engineering-design/beaver-creek-evans-road-extension-flood-study/ (last visited Aug. 30, 2012).
 - O West Point at 751 Development: "S&EC worked with the developer by providing all wetland and stream evaluations, permitting phases, listed species surveys, public meeting representation and coordination with local, Federal and State agencies." http://sandec.com/portfolio/engineering-design/franklin-county-hub-flood-study/ (last visited Aug. 30, 2012).

- 28. S&EC lists the following clients, *inter alia*, on its website: American Asset Corporation Real Estate, DDR Corp., John R. McAdams Company, Highwoods Properties, USAA Real Estate Company, Ashland Construction, George Finch/Boney & Associates, PA, Horvath Associates PA, Peak Engineering & Design, PLLC, Wake Stone Corporation.
- 29. Upon information and belief, some or all of these clients have a financial interest in the interpretation of the rules by the EMC in this contested case.
- 30. Upon information and belief, S&EC and Mr. Martin continue to represent clients that have a financial interest in the interpretation of the water quality certification rules or the Tar-Pamlico Riparian Buffer Rules.

Commissioner Steve W. Tedder

- 31. According to the EMC's published biographies, Commissioner Steve Tedder owns and operates Tedderfarm Consulting, a consulting firm that provides services including "regulatory negotiations" and "regulatory strategy." Ex. C.
- 32. Upon information and belief, Mr. Tedder represents clients seeking 401 certifications from the Division of Water Quality. See Exhibit D. Mr. Tedder lists the following clients, *inter alia*, on his firm's website: Uwharrie Golf Club, Anderson Creek Club, Grey Engineering, Inc., and Kimley-Horn and Associates, Inc.
- 33. Upon information and belief, some or all of these clients have a financial interest in the interpretation of the rules by the EMC in this contested case.
- 34. Upon information and belief, Mr. Tedder continues to represent clients who have a financial interest in the interpretation of the water quality certification rules or the Tar-Pamlico Riparian Buffer Rules.

35. In his webpage advertising his consulting firm and services, Mr. Tedder includes "member of the Environmental Management Commission" in describing his qualifications to provide consulting services.

Commissioner William L. Hall

- 36. According to the EMC's published biographies, Commissioner William Hall is employed by McKim & Creed, an environmental consulting firm providing services in planning and land development and stormwater management. Both areas include representing clients in environmental permitting. www.mckimcreed.com.
- 37. Upon information and belief, McKim & Creed represents clients seeking 401 certifications, including Newland Communities during the development of the Briar Chapel Subdivision in Chatham County. See Letter from Annette M. Lucas, P.E., DWQ, to William Mumford, Vice President of Newland Communities (Oct. 4, 2011), Ex. E.
- 38. Upon information and belief, some of McKim & Creed's Engineering Services clients have a financial interest in the interpretation of the rules by the EMC in this contested case.
- 39. Upon information and belief, McKim & Creed continues to represent clients who have a financial interest in the interpretation of the water quality certification rules or the Tar-Pamlico Riparian Buffer Rules.
- 40. In its webpage advertising the services of his consulting firm McKim & Creed, the firm includes Mr. Hall's membership on the EMC. http://www.mckimcreed.com/Company/NewsStory/67

Commissioner Benne C. Hutson

- 41. Upon information and belief, Commissioner Benne Hutson is an attorney at McGuireWoods and represents clients on permitting matters including 401 certifications.
- 42. McGuireWoods represents clients "in connection with water quality-related matters" and provides "complete project permitting management." Practice Areas:

 Environmental Solutions, McGuireWoods,

 http://www.mcguirewoods.com/practices/environmental_solutions_9.asp,

 http://www.mcguirewoods.com/practices/environmental_solutions_7.asp (last visited Aug. 30, 2012). That representation includes "overseeing the permitting of wetland impacts for malls, shopping centers, power production facilities, mines and large scale residential developments in . . . North Carolina." Practice Areas: Environmental Solutions Wetlands, McGuireWoods http://www.mcguirewoods.com/practices/environmental_solutions_10.asp (last visited Aug. 31, 2012).
- 43. Through Benne Hutson, McGuireWoods represented Mountain Air Development Corporation in its construction of a golf course, for which the applicant had to obtain a 401 certification. See Hensley v. N.C. Dep't of Env't & Natural Res., 201 N.C. App. 1, 24, 685 S.E.2d 570, 587 (2009) (Steelman, J., dissenting), rev'd 364 N.C. 285, 698 S.E.2d 41 (2010).
- 44. Mr. Hutson's firm McGuireWoods lists Republic Services (formerly Allied Waste Industries) as a "Representative Client[]" of Mr. Hutson's.
- 45. Upon information and belief, some of McGuireWoods's and Mr. Hutson's clients have a financial interest in the interpretation of the rules by the EMC in this contested case.

- 46. Upon information and belief, McGuireWoods and Mr. Hutson continue to represent clients who have a financial interest in the interpretation of the water quality certification rules or the Tar-Pamlico Riparian Buffer Rules.
- 47. In its webpage advertising the services of his law firm McGuire Woods, the firm includes Mr. Hutson's membership on the EMC. http://www.mcguirewoods.com/news-resources/item.asp?item=6777

Commissioner Christopher Ayers

- 48. Commissioner Ayers is an attorney at Poyner Spruill. Poyner Spruill, http://www.poynerspruill.com/people/Pages/ChristopherJAyers.aspx (last visited Aug. 30, 2012).
- 49. Mr. Ayers "regularly represent[s] utility clients in . . . environmental permitting and compliance hearings". <u>Chris Ayers</u>, Linkedin, <u>http://www.linkedin.com/in/chrisayersjd</u> (last visited Aug. 30, 2012).
- 50. Poyner Spruill also "regularly represent[s] parties whose applications for various environmental permits have been denied" and "assist[s] clients seeking to develop property where wetlands are present, and represent[s] people cited for alleged violations of wetland protection laws." Environmental Law, Poyner Spruill, http://www.poynerspruill.com/servicesandindustries/Pages/EnvironmentalLaw.aspx (last visited Aug. 31, 2012).
- 51. Poyner Spruill appears to have represented the Western Wake Regional Wastewater Management Facilities Project Partners in a challenge to its 401 certification in 2010. See Pet. for Contested Case Hr'g, New Hill Community Ass'n v. DWQ (Sept. 9, 2010), Ex. F.

- 52. Upon information and belief, some of Poyner Spruill's Environmental Law Practice Group's clients have a financial interest in the interpretation of the rules by the EMC in this contested case.
- 53. Upon information and belief, Poyner Spruill and Mr. Ayers continue to represent clients who have a financial interest in the interpretation of the water quality certification rules or the Tar-Pamlico Riparian Buffer Rules.
- 54. In its webpage advertising the services of his law firm Poyner Spruill and on Mr. Ayer's biography, the firm includes Mr. Ayer's membership on the EMC. News & Events, Poyner Spruill,

http://www.poynerspruill.com/newsandevents/Pages/PoynerSpruillPartnerChrisAyersAppointedt oNCEnvironmentalManagementCommission.aspx (last visited Aug. 31, 2012); Christopher J.
Ayers, Poyner Spruill, https://www.poynerspruill.com/people/Pages/ChristopherJAyers.aspx (last visited Aug. 31, 2012).

Conclusion

Procedures, and Executive Order One, Commissioners Kevin Martin, Steve Tedder, William Hall, Benne Hutson, and Christopher Ayers should disclose potential or actual conflicts arising from their representation of clients with financial interests in the application of the water quality certification rules, seek guidance with respect to those potential or actual conflicts and a determination of disqualification. In addition, the EMC should investigate potential and actual conflicts for any commissioner not included in this Request who represents clients that have a financial interest in the interpretation the rules at issue. The EMC should investigate those potential and actual conflicts and make a determination regarding disqualification.

WHEREFORE, Petitioners respectfully request that the Honorable Commissioners Kevin Martin, Steve Tedder, William Hall, Benne Hutson, and Christopher Ayers fully disclose information and materials related to their business interests that create potential or actual conflicts in this proceeding. Petitioners request that the EMC investigate and make a determination whether these Commissioners, and any other commissioners who represent clients with a financial interest in the application of the water quality certification rules, have any potential or actual conflicts and whether disqualification is appropriate. Petitioners request notification of the Commission's determination and that all relevant materials be timely provided to all parties in this contested case.

Respectfully submitted this 5th day of September, 2012.

Derb S. Carter, Jr.

N.C. State Bar 10644

Geoffrey R. Gisler

N.C. State Bar 35304

SOUTHERN ENVIRONMENTAL LAW CENTER

601 West Rosemary Street, Suite 220

Chapel Hill, NC 27516

(919) 967-1450

dcarter@selcnc.org

ggisler@selcnc.org

Attorneys for the PAMLICO-TAR RIVER FOUNDATION, NORTH CAROLINA COASTAL FEDERATION, ENVIRONMENTAL DEFENSE FUND, and SIERRA CLUB

David A. Emmerling, being duly sworn, deposes and says that he is the Executive Director of the Pamlico-Tar River Foundation and that he has read the foregoing **VERIFIED REQUEST**, that he knows the contents thereof, and that the facts set for therein are true of his own knowledge or believed by him to be true based upon reasonable inquiry.

This the 4th day of 2012.

David A. Emmerling

Executive Director

Pamlico-Tar River Foundation

NORTH CAROLINA

Beaufort county

I, Terry M. (Woo lard), A NOTARY PUBLIC FOR SAID COUNTY AND STATE, DO HEREBY CERTIFY THAT DAVID A EMMERLING PERSONALLY APPEARED BEFORE ME THIS DAY AND HAVING BEEN DULY SWORN, ACCORDING TO LAW, MADE THE ATTACHED AFFIDAVIT. WITNESS MY HAND AND OFFICIAL SEAL, THIS THE HAM DAY OF Sofewher, 2012.

NOTARY PUBLIC

MY COMMISSION EXPIRES ON: 05/2013

Molly Diggins, being duly sworn, deposes and says that she is the State Director of the North Carolina Chapter of the Sierra Club and that he has read the foregoing **VERIFIED REQUEST**, that he knows the contents thereof, and that the facts set for therein are true of his own knowledge or believed by him to be true based upon reasonable inquiry.

This the $\frac{1}{2}$ day of $\frac{1}{2}$, 2012.

Molly Diggins
State Director

North Carolina Chapter of the Sierra Club

NORTH CAROLINA
LOCKE COUNTY

I, Kindsely H. Roberb, A NOTARY PUBLIC FOR SAID COUNTY AND STATE, DO HEREBY CERTIFY THAT MOLLY DIGGINS PERSONALLY APPEARED BEFORE ME THIS DAY AND HAVING BEEN DULY SWORN, ACCORDING TO LAW, MADE THE ATTACHED AFFIDAVIT. WITNESS MY HAND AND OFFICIAL SEAL, THIS THE 41 DAY OF September, 2012.

NOTARY PUBLIC

MY COMMISSION EXPIRES ON: (Y) (2), (2)

Jane Preyer, being duly sworn, deposes and says that she is the Director of the Southeast Office of the Environmental Defense Fund and that he has read the foregoing **VERIFIED REQUEST**, that he knows the contents thereof, and that the facts set for therein are true of his own knowledge or believed by him to be true based upon reasonable inquiry.

This the 4th day of September, 2012.

Jane Prever

Director, Southeast Office Environmental Defense Fund

NORTH CAROLINA

Orange COUNTY

I, Brenda P. Kenian, A NOTARY PUBLIC FOR SAID COUNTY AND STATE, DO HEREBY CERTIFY THAT JANE PREYER PERSONALLY APPEARED BEFORE ME THIS DAY AND HAVING BEEN DULY SWORN, ACCORDING TO LAW, MADE THE ATTACHED AFFIDAVIT. WITNESS MY HAND AND OFFICIAL SEAL, THIS THE HELDAY OF SIGNALLY, 2012.

NOTARY PUBLIC

MY COMMISSION EXPIRES ON:

Todd Miller, being duly sworn, deposes and says that he is the Executive Director of the North Carolina Coastal Federation and that he has read the foregoing **VERIFIED REQUEST**, that he knows the contents thereof, and that the facts set for therein are true of his own knowledge or believed by him to be true based upon reasonable inquiry.

This the 5 day of Sept. 2012.

Todd Miller

Executive Director

North Carolina Coastal Federation

Cartenet COUNTY

I, John Maysh, A Notary Public for Said County and State, DO HEREBY CERTIFY THAT TODD MILLER PERSONALLY APPEARED BEFORE ME THIS DAY AND HAVING BEEN DULY SWORN, ACCORDING TO LAW, MADE THE ATTACHED AFFIDAVIT. WITNESS MY HAND AND OFFICIAL SEAL, THIS THE _____ DAY OF September, 2012.

NOTARY PUBLIC

MY COMMISSION EXPIRES ON:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing RESPONSE TO INTERVENOR'S VERIFIED REQUEST AND PETITIONERS' VERIFIED REQUEST FOR DISCLOSURE, INVESTIGATION, AND DETERMINATION OF COMMISISONER CONFLICTS AND DISQUALIFICATION IF AND AS APPROPRIATE has been served by regular mail via the United States mail, postage prepaid, addressed as follows:

George W. House Alexander Elkan Brooks, Pierce, McLendon, Humphrey & Leonard PO Box 26000 Greensboro, NC 27420 ghouse@brookspierce.com aelkan@brookspierce.com

John A. Payne Assistant Attorney General NC Department of Justice PO Box 629 Raleigh, NC 27602 jpayne@ncdoj.gov

This the 5th day of September, 2012.

Geoffrey R. Gisler

NC State Bar No. 35304

Attorney for Petitioners